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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,966	02/25/2002	Nicholas P. Van Brunt	7175-74147	2081

23643 7590 08/19/2005

BARNES & THORNBURG
11 SOUTH MERIDIAN
INDIANAPOLIS, IN 46204

EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,966

Applicant(s)

VAN BRUNT ET AL.

Examiner

Danton DeMille

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8 and 10-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4-8,10-19 and 27-47 is/are allowed.
- 6) ☒ Claim(s) 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. **Claim 20 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bird et al. 3,454,000.**
2. The teaching of Bird can be found in the last office action. Regarding the new limitation that the vest is shaped to essentially only cover a lung-containing region of the patient's chest the vest of Bird is capable of such intended use. The vest of Bird is intended to "substantially cover the patient's chest" column 3, lines 26-27. While Bird teaches the vest is intended to be placed below the rib cage and not cover the lung-containing region, the vest is perfectly capable of being placed higher on the chest, under the arm pits of the patient such that it will essentially cover only the lung-containing region of the patient's chest. The structure of Bird does not need to be modified at all. Only the placement of the device during use. The distance from the top of the vest to the armpits of the patient appears to be the same distance from the top of the vest to the bottom of the vest. Therefore if the vest were to be placed under the armpits it would extend down to where the top of the vest now rests which is at the diaphragm of the patient. This would substantially cover the patient's lungs. Bird's device still anticipates the invention as claimed.

Claim Rejections - 35 USC § 103

3. **Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bird et al. '000 in view of Press et al. '676.**
4. The rejection set forth in the last office action is repeated here and is maintained. Placing the vest over the lungs does not structurally define over Bird.

5. **Claims 1, 2, 4-8, 10-19 and 27-47 are allowable over prior art to which the examiner is aware.**

6. Applicant's arguments filed 5/5/5 have been fully considered but they are not persuasive. While Bird shows the vest is placed below the diaphragm of the patient, it is clearly capable of covering a substantial portion of the lung region of the patient. This new limitation fails to further structurally define the invention over Bird. The only difference is where the vest is placed on the patient.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

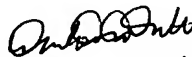
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-Th from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

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10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

18 August 2005


Danton DeMille
Primary Examiner
Art Unit 3764